

Introduced by Senator Migden

December 4, 2006

An act to amend ~~Section 297~~ *Sections 297 and 298.5* of the Family Code, and to amend Section 2854 of the Probate Code, relating to domestic partnerships.

LEGISLATIVE COUNSEL'S DIGEST

SB 11, as amended, Migden. Domestic partnerships.

Existing law provides that 2 unmarried, unrelated adults with a common residence may establish a domestic partnership by filing a declaration with the Secretary of State if both persons are members of the same sex or are over 62 years of age.

This bill would delete that latter same-sex or age eligibility requirement, thereby allowing any 2 persons who meet the other, specified criteria to register as domestic partners. The bill would also make ~~a~~ *other* nonsubstantive, technical, and conforming ~~change~~ *changes* to ~~an unrelated provision~~ *related provisions*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 297 of the Family Code is amended to
- 2 read:
- 3 297. (a) Domestic partners are two adults who have chosen
- 4 to share one another's lives in an intimate and committed
- 5 relationship of mutual caring.

1 (b) A domestic partnership shall be established in California
2 when both persons file a Declaration of Domestic Partnership with
3 the Secretary of State pursuant to this division, and, at the time of
4 filing, all of the following requirements are met:

5 (1) Both persons have a common residence.

6 (2) Neither person is married to someone else or is a member
7 of another domestic partnership with someone else that has not
8 been terminated, dissolved, or adjudged a nullity.

9 (3) The two persons are not related by blood in a way that would
10 prevent them from being married to each other in this state.

11 (4) Both persons are at least 18 years of age.

12 (5) Both persons are capable of consenting to the domestic
13 partnership.

14 (c) “Have a common residence” means that both domestic
15 partners share the same residence. It is not necessary that the legal
16 right to possess the common residence be in both of their names.
17 Two people have a common residence even if one or both have
18 additional residences. Domestic partners do not cease to have a
19 common residence if one leaves the common residence but intends
20 to return.

21 *SEC. 2. Section 298.5 of the Family Code is amended to read:*

22 298.5. (a) Two persons desiring to become domestic partners
23 may complete and file a Declaration of Domestic Partnership with
24 the Secretary of State.

25 (b) The Secretary of State shall register the Declaration of
26 Domestic Partnership in a registry for those partnerships, and shall
27 return a copy of the registered form and a Certificate of Registered
28 Domestic Partnership, and ~~except for those opposite sex domestic~~
29 ~~partners who meet the qualifications described in subparagraph~~
30 ~~(B) of paragraph (5) of subdivision (b) of Section 297,~~ a copy of
31 the brochure that is made available to county clerks and the
32 Secretary of State by the State Department of Health Services
33 pursuant to Section 358 and distributed to individuals receiving a
34 confidential marriage license pursuant to Section 503, to the
35 domestic partners at the mailing address provided by the domestic
36 partners.

37 (c) No person who has filed a Declaration of Domestic
38 Partnership may file a new Declaration of Domestic Partnership
39 or enter a civil marriage with someone other than their registered
40 domestic partner unless the most recent domestic partnership has

1 been terminated or a final judgment of dissolution or nullity of the
2 most recent domestic partnership has been entered. This prohibition
3 does not apply if the previous domestic partnership ended because
4 one of the partners died.

5 (d) When funding allows, the Secretary of State shall print and
6 make available upon request, pursuant to Section 358, a lesbian,
7 gay, bisexual, and transgender specific domestic abuse brochure
8 developed by the State Department of Health Services and made
9 available to the Secretary of State to domestic partners who qualify
10 pursuant to Section 297.

11 ~~SEC. 2.~~

12 *SEC. 3.* Section 2854 of the Probate Code is amended to read:

13 2854. (a) This chapter does not apply to any public conservator
14 or public guardian with regard to his or her official acts in that
15 capacity.

16 (b) This chapter does not apply to any conservator, guardian,
17 or trustee when the person is related to the conservatee, ward, or
18 trustor by blood, marriage, adoption, registered domestic
19 partnership, or a relationship that satisfies the requirements of
20 subdivisions (a) and (b) of Section 297 of the Family Code.

21 (c) This chapter does not apply to any trustee who is serving
22 for the benefit of not more than three people or not more than three
23 families, or a combination of people or families that does not total
24 more than three. The number of trust beneficiaries does not count
25 for the purposes of calculating if a trustee falls within this
26 exclusion. A trust excluded under subdivision (a) or (b) does not
27 count for the purpose of calculating if a trustee falls within this
28 exclusion. For the purposes of this subdivision, family means
29 people who are related by blood, marriage, adoption, registered
30 domestic partnership, or a relationship that satisfies the
31 requirements of subdivisions (a) and (b) of Section 297 of the
32 Family Code.

33 (d) This chapter does not apply to any conservator or guardian
34 who is not required to file information with the clerk of the court
35 pursuant to Section 2340, to any person or entity subject to the
36 oversight of a local government, including an employee of a city,
37 county, or city and county, or to any person or entity subject to
38 the oversight of the state or federal government, including an
39 attorney licensed to practice law in the State of California who

1 acts as trustee of only attorney client trust accounts, as defined in
2 Section 6211 of the Business and Professions Code.

3 (e) This chapter does not apply to any conservator who resided
4 in the same home with the conservatee immediately prior to the
5 condition or event that gave rise to the necessity of a
6 conservatorship. This subdivision does not create any order or
7 preference of appointment, but simply exempts a conservator
8 described by this subdivision from registration.

9 (f) This chapter does not apply to a trustee who is any of the
10 following:

11 (1) Trust companies, as defined in Section 83.

12 (2) FDIC-insured institutions, their holding companies,
13 subsidiaries, or affiliates. For the purposes of this paragraph,
14 “affiliate” means any entity that shares an ownership interest with
15 or that is under the common control of, the FDIC-insured
16 institution.

17 (3) Employees of any entity listed in paragraph (1) or (2) while
18 serving as trustees in the scope of their duties.